

ORDINANCE NO. 2013-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH GRANTING A NON-EXCLUSIVE COMMERCIAL SOLID WASTE FRANCHISE TO G. O. RODRIGUEZ TRUCKING, INC., A CALIFORNIA CORPORATION, TO PROVIDE SOLID WASTE COLLECTION SERVICES UPON THE CITY STREETS AND WITHIN THE CITY OF NEWPORT BEACH

WHEREAS, the City of Newport Beach ("City") is a charter city, governed by a charter adopted by the citizens of the City;

WHEREAS, Article XI, Section 5 of the Constitution of the State of California authorizes charter cities to enact ordinances with respect to their municipal affairs;

WHEREAS, California Public Resources Code Section 49300 authorizes the City to adopt local rules for the issuance of franchises;

WHEREAS, pursuant to Charter Article XIII and Newport Beach Municipal Code Chapter 12.63, the City utilizes a non-exclusive franchise system to manage commercial solid waste collection;

WHEREAS, this system assists the City in complying with AB 939, which requires cities in California to divert 50% of municipal solid waste from the landfill each year; and

WHEREAS, there are currently thirty-two (32) solid waste franchisees operating under separate agreements to collect and transport solid waste generated within City limits.

NOW THEREFORE, in consideration of the preceding findings and declarations, the City Council of the City of Newport Beach, California, hereby ordains as follows:

SECTION 1: Findings

A. Article XIII of the City Charter and Sections 49500 through 49523 of the Public Resources Code authorize the City to enter into non-exclusive franchise agreements for commercial solid waste handling services with private solid waste enterprises.

B. The City Charter and Chapter 12.63 of the Newport Beach Municipal code establish requirements and procedures to grant a franchise to provide solid waste handling services within the City of Newport Beach.

C. Pursuant to Section 12.63.080 of the Newport Beach Municipal Code, the City Council makes the following findings:

- The application complies with Newport Beach Municipal Code Chapter 12.63;
- That the applicant or any person responsible for the management of the entity submitting the application has not within the past three years had: (1) a franchise for commercial solid waste handling services terminated by the City, and/or (2) operated a solid waste enterprise within the City without a franchise;
- That awarding the franchise is in accord with the objectives of Newport Beach Municipal Code Chapter 12.63;
- That granting of such franchise will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the City or be materially detrimental to the public welfare or injurious to property or public improvements; and
- That the applicant has sufficient experience, equipment or recycling plan to safely comply with the requirements of the franchise agreement.

D. In compliance with the City Charter a duly noticed public hearing was held on November 26, 2013, to consider the granting of a franchise to G. O. Rodriguez Trucking, Inc., a California corporation.

E. Having considered all oral and documentary evidence presented at the public hearing, the City Council has determined that the granting of a non-exclusive franchise is in the public interest.

SECTION 2: Definitions

All words, terms, phrases in this Ordinance shall have the meanings set forth in Section 12.63.020 of Chapter 12.63 of the Newport Beach Municipal Code.

SECTION 3: Franchise Agreements

A. Grant of Franchises

There is hereby granted to the enterprise listed below (hereinafter, "Franchisee") a non-exclusive franchise to operate, maintain, and provide solid waste handling services along, across and over the public streets, alleys, public ways and public places dedicated for public use in the City:

- (a) G. O. Rodriguez Trucking, Inc., a California corporation

B. Non-exclusive Grant

The right to use City streets, alleys, public ways and places for the purposes set forth in this Ordinance, shall not be exclusive and the City reserves the right to grant a similar use of streets, alleys, public ways and places to any person at any time during the term of this franchise.

C. Term of Franchises

The term of the franchise per Section 2 of the Franchise Agreement ("Agreement") attached hereto as Exhibit A, *Commercial Solid Waste Collection Franchise Agreement between the City of Newport Beach and G. O. Rodriguez Trucking, Inc., a California corporation*, is hereby adopted, approved and incorporated into this Ordinance by reference, shall commence at 12:01 a.m., on December 27, 2013, and expire on March 1, 2017. The franchise shall take effect on the date specified above provided that the grantee has filed written notice of acceptance in accordance with the requirement of Section 4 of this Ordinance.

D. Franchise Fees

(1) During the term of the Agreement, Franchisee shall pay to City franchise fees for the privilege of providing commercial solid waste handling services in the City of Newport Beach and use of public streets, right of ways, and places for such purposes. Fees shall be in the following amounts:

Franchisee shall pay to the City 10.5% (ten and one-half percent) of the Franchisee's gross receipts. Franchise fee payments shall be paid quarterly and shall be computed and paid on the basis of paid receipts received by the Franchisee for all solid waste handling services provided by the Franchisee within the City.

One-half of one percent (0.5%) of the franchise fee shall be attributable to the maintenance and implementation of the City's Source Reduction and Recycling Element (SRRE), and shall be separately accounted for, and used only for the costs stated in Public Revenue Code Section 41901 or any successor provisions.

(2) Franchisee shall pay to the City Environmental Liability Fund, on a quarterly basis, 5.5% of gross receipts for all commercial solid waste handling services provided by the Franchisee in the City. Payment shall be made concurrently with the payment of the franchise fee and the filing of reports specified in Section 4 and Section 6 of the Agreements.

E. Inclusion of Franchise Documents

Franchisee shall comply with and shall be bound by all of the terms, provisions and conditions contained in the City Charter, this Ordinance, Chapter 12.63 of the Newport Beach Municipal Code and the Franchise Agreement.

SECTION 4: Effective Date

This Ordinance shall become effective thirty (30) days from and after the date of its adoption; provided, however, franchises granted by this Ordinance shall not become effective unless and until the grantee files written acceptance of the franchise with the City Clerk, and delivers to the City all bonds and insurance policies required to be furnished in accordance with the requirements of Chapter 12.63 of the Newport Beach Municipal Code and the Franchise Agreement. The written acceptance shall be in form and substance as prescribed by the City Attorney and shall operate as an acceptance of each and every term, condition and limitation contained in this Ordinance, the Franchise Agreement, Article XIII of the City Charter, and Chapter 12.63 of the Newport Beach Municipal Code. The grantee shall file written acceptance of the franchise no later than ten (10) days after the adoption of this Ordinance.

SECTION 5: CEQA Exemption

The City Council of the City of Newport Beach finds that this Ordinance is categorically exempt under the California Code of Regulations Section 15301 and 15308 defined as "existing operations and facilities" and as "actions by regulatory agencies for protection of the environment" respectively. Use of the above exemption classifications are appropriate because this Ordinance does not change nor expand existing solid waste operations and facilities within the City. The Ordinance is also consistent with the goals of California State Assembly Bill 939, *The California Solid Waste Management Act* as well as the objectives of the City's Source Reduction and Recycling Element (SRRE).

SECTION 6: Severability

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

SECTION 7: Adoption of Ordinance

The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days after its adoption. This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the 12th day of November, 2013, and adopted on the 26th day of November, 2013 by the following vote to wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

KEITH D. CURRY, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

AARON C. HARP, CITY ATTORNEY

Exhibits: A. Commercial Solid Waste Collection Non-exclusive Franchise Agreement Between the City of Newport Beach and G. O. Rodriguez Trucking, Inc., a California corporation

Exhibit A:

Commercial Solid Waste Collection Non-exclusive Franchise Agreement Between the
City of Newport Beach and G. O. Rodriguez Trucking, Inc., a California corporation

**COMMERCIAL SOLID WASTE COLLECTION
NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF
NEWPORT BEACH AND G. O. RODRIGUEZ TRUCKING, INC., A CALIFORNIA
CORPORATION**

THIS NONEXCLUSIVE FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE HANDLING SERVICES ("Agreement") is entered into this 27th Day of December, 2013 ("Effective Date") by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city organized and existing under the laws of the State of California ("City"), and G. O. RODRIGUEZ TRUCKING INC., a California corporation ("Franchisee"), whose address is 16155 First Street, Irwindale, CA 91706 and is made with reference to the following:

RECITALS

This Agreement is entered into on the basis of the following facts:

A. Franchisee has provided or is capable of providing commercial solid waste collection services in the City.

B. Pursuant to Article XIII of the City Charter, Chapter 12.63 of the City of Newport Beach Municipal Code ("Code"), and Sections 49300 and 49500-49523 of the Public Resources Code, the City is authorized to enter into non-exclusive franchise agreements for commercial solid waste handling services.

C. Pursuant to this Agreement, City desires to authorize Franchisee to provide non-exclusive commercial solid waste handling services within the City. Franchisee shall furnish all personnel, equipment, and supplies necessary to collect, transport, or otherwise remove and dispose of solid waste and recyclable materials from commercial, institutional, or industrial premises within the City.

D. The City Council has determined that the grant of a non-exclusive franchise is in the public interest.

NOW, THEREFORE, CITY AND FRANCHISEE DO HEREBY AGREE AS FOLLOWS:

SECTION 1. GRANT OF FRANCHISE

A. By Ordinance No. 2013-____, City has granted to Franchisee a nonexclusive franchise authorizing Franchisee to provide commercial solid waste handling services for solid waste kept, accumulated, or generated in the City of Newport Beach and to use the public streets and public right-of-ways for such purpose ("Franchise"). Franchisee acknowledges that the Franchise is not exclusive and that the Franchise is subject to the provisions of Article XIII of the City Charter, Ordinance No. 2013-____, Chapter 12.63 of the Code, and the terms and conditions of this Agreement.

B. Upon the Effective Date of this Agreement, the parties agree that any prior authorization relating to the conduct of commercial solid waste handling services in the City arising under and pursuant to any prior franchise issued to Franchisee shall be deemed to be terminated and of no further force or effect.

SECTION 2. TERM OF FRANCHISE

The term of this Agreement shall commence on the Effective Date, and shall terminate on the 1st Day of March, 2017 ("Termination Date"), unless terminated earlier as set forth herein ("Term").

SECTION 3. DEFINITIONS

Unless otherwise defined herein, or if the use or context clearly requires a different definition, all words, terms and phrases in this Agreement and the derivations thereof shall have the meanings set forth in Section 12.63.020 of the Code.

SECTION 4. FRANCHISE FEES

A. During the Term of the Franchise, Franchisee shall pay to City franchise fees for the privilege of providing commercial solid waste handling services in the City of Newport Beach and for the use of public streets, right-of-ways and places for such purposes. The franchise fee that Franchisee shall pay to the City shall be ten and a half percent (10.5%) of the gross receipts for all commercial solid waste handling services provided by the Franchisee in the City of Newport Beach ("Franchise Fees"). One half percent (.5%) of the Franchise Fee shall be attributable to the maintenance and implementation of the City's Source Reduction and Recycling Element ("SRRE"), and shall be separately accounted for, and used only for the costs stated in Public Resources Code section 41901 or any successor provision.

B Franchise Fees shall be paid quarterly on forms prescribed by the Finance Director.

C. Franchisee shall pay all required Franchise Fees to:

City of Newport Beach
Attn: Finance Director
P.O. Box 1768
100 Civic Center Drive
Newport Beach, CA 92658

D. Franchise Fees shall be due and payable on the thirtieth (30th) day of the month following the end of each quarter. Since the effective date for this Agreement is starting mid-quarter, the first payment of the Franchise Fees due and payable to the City from the Effective Date to the end of the third quarter (e.g. February 28, 2013) will be due and payable on the 28th day of March 2013."

E. The parties hereto agree that Franchisee's failure to make Franchise Fee and Environmental Liability Fund Fee, as set forth in Section 8 (hereinafter the Franchise Fee and Environmental Liability Fund Fee shall collectively be referred to as "Fee(s)"), payments within the time allowed will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. If Fees are not paid by Franchisee when due then in addition to the Fees, Franchisee shall pay a late charge in an amount equal to ten percent (10%) of the amount of the Fee that was not timely paid by Franchisee. If Franchisee fails to pay delinquent Fees within thirty (30) days of the date due, Franchisee shall pay a second (2nd) late charge in an amount equal ten percent (10%) on both the amount of the Fee outstanding and the first late charge. The second (2nd) late charge shall be in addition to the first (1st) late charge. Execution of this Agreement shall constitute agreement by the parties that the late charges set forth in this subsection is the minimum value of the costs and actual damages caused by the failure of the Franchisee to pay the Fees within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty.

In addition to the late charges imposed on Franchisee for failing to pay Fees in accordance with this Agreement, Franchisee shall pay interest on the amount of Fees and late charges due and owing at the rate of one and one-half percent (1½ %) per month for each month or portion of a month that the Fees and late charges remain unpaid.

F. In the event Franchisee believes that it has paid Fees in excess of the Fees due to City, Franchisee may submit a request for refund to the Finance Director on a form provided by the Director. If proof of overpayment is satisfactory to the Director, the Director shall refund to Franchisee any overpayment. Franchisee shall not apply any overpayment as a credit against any other amounts payable to City unless specifically authorized by the Finance Director in writing.

G. Each Franchise Fee payment shall be accompanied by a written statement described in Section 12.63.090 of the Code on a form provided by the Finance Director. No statement filed under this Section shall be conclusive as to the matters set forth in such statement, nor shall the filing of such statement preclude the City from collecting by appropriate action the sum that is actually due and payable.

H. Franchisee may separately list the actual Franchise Fee rate and Environmental Liability Fund Fee rate as established by this Section, and any other fees required by this Agreement, on its invoices to its customers. In no case may the Franchise Fee rate or Environmental Liability Fund Fee rate listed by the Franchisee on the invoice exceed the actual Franchise Fee or Environmental Liability Fund Fee rates imposed by the City.

SECTION 5. CASH DEPOSIT

Franchisee shall, prior to the placement of any commercial solid waste container on public property, provide City with a cash deposit in the sum of Five Thousand Dollars and no/100 (\$5,000.00) to ensure compliance with the duties and obligations imposed

by the provisions of the Code, regulations adopted by the City Manager or his designee and this Agreement.

SECTION 6. DISPOSAL OF SOLID WASTE

A. Franchisee shall comply with all recycling and diversion requirements imposed by law, ordinance, or regulation on the City and/or Franchisee. On a quarterly basis Franchisee shall divert solid waste collected from landfills as follows: Year 1: fifty percent (50%); Year 2: fifty-one percent (51%); Year 3: fifty-two percent (52%); Year 4: fifty-three percent (53%); Year 5: fifty-four percent (54%); Years 6-10: fifty-five percent (55%). In no event shall Franchisee deposit more solid waste at any landfill during any calendar quarter than the required diversion rate mandated by the City. In the event new or additional diversion requirements are imposed by law, ordinance or regulation on City and/or Franchisee, the City shall have the right to require Franchisee to divert additional solid waste from landfills by providing Franchisee with ten (10) days written notice of the new diversion requirements. Upon request of the Municipal Operations Director, Franchisee shall provide all documents and information requested by the Municipal Operations Director to prove that Franchisee has complied with this subsection, any applicable law, ordinance, regulation, or condition related to recycling and diversion of solid waste.

B. Franchisee shall dispose of solid waste collected or transported by Franchisee only by taking such solid waste to an Orange County certified/licensed landfill, State certified/licensed transfer station, State certified/licensed recycling facility or State certified/licensed materials recovery facility which is lawfully authorized to accept that specific type of solid waste material. Franchisee shall not dispose of solid waste by depositing it on any land, (except a permitted facility) whether public or private, or in any river, stream or other waterway, or in any sanitary sewer or storm drainage system. Nothing in this Agreement shall be deemed or construed as authorizing Franchisee to operate a landfill, recycling center, or other solid waste disposal facility.

C. All solid waste, in addition to recyclables, collected by Franchisee shall become the property of Franchisee upon placement by the customer for collection. If Franchisee violates the terms in Section 6(A) and Section 6(B) above, Franchisee agrees that the City has the future right to direct that solid waste be delivered to a permitted disposal facility designated by City. This exercise of "flow control" by the City shall be made upon at least 30 days prior written notice to Franchisee, and written notice shall include the violation(s) prompting the City's action regarding "flow control." Failure to comply with the recycling/diversion requirements and delivery/disposal of materials in accordance to the designated certified/licensed facility shall be a material breach of this agreement.

D. Franchisee shall include as a condition to its contractual agreement with its customers a provision prohibiting disposal of hazardous waste in any of Franchisees vehicles or disposal bins/containers, and other equipment.

E. Franchisee shall implement a load check program that includes, at a minimum, a visual check of all containers to be emptied to protect against inclusion of

hazardous waste and shall prepare a written record of all hazardous waste discovered during the process. The records shall comply with all State and Federal Hazardous Waste Regulations, shall be maintained for the length of the term of the Franchise, and shall be made available to the City upon request.

SECTION 7. REPORTS

A. Franchisee shall submit to City monthly reports stating the total amount (in tons) of solid waste which Franchisee collected in the City of Newport Beach during the reportable month; the total weight (in tons) of solid waste disposed of by Franchisee at landfills and transfer stations which Franchisee collected in the City of Newport Beach during the reportable month; the total weight and the weight by material category (in tons) of solid waste disposed of by Franchisee at recycling and materials recovery facilities during the reportable month which Franchisee collected in the City of Newport Beach; the name and location of all solid waste and recycling facilities where City of Newport Beach materials were delivered; such other tonnage or other information as requested by the Municipal Operations Director including weigh tickets, recycling records; and any complaints received by the Franchisee. Such monthly reports shall be prepared on such form as required by the Municipal Operations Director. Each monthly report shall be submitted on or before the 15th day of the month following the end of the month (i.e. report due April 15 for first month after the Effective Date) and submitted to:

Deputy Municipal Operations Director
City of Newport Beach
P.O. Box 1768
100 Civic Center Dr.
Newport Beach, CA 92660

B. If the report required under Subsection A is not filed by the due date specified above, the report shall be deemed delinquent. If the report remains delinquent for more than fifteen (15) days, Franchisee shall pay to City a delinquent report charge in the amount of One Hundred Dollars and no/100 (\$100.00). If the report remains delinquent for more than forty-five (45) days, Franchisee shall pay to City a delinquent report charge in the amount of Five Hundred Dollars and no/100 (\$500.00). Such delinquent report charges shall be in addition to any Franchise Fees or other charges payable by Franchisee under this Agreement.

C. Franchisee shall comply with all recycling and diversion requirements imposed by law, ordinance, or regulation on the City. Monthly reports stating the total amount (in tons) of solid waste which Franchisee landfilled, recycled and collected should accurately reflect the diversion rate required by the City (Year 1- 50%, Year 2- 51%, Year 3- 52%, Year 4- 53%, Year 5- 54%, Years 6-10- 55%). At the end of each quarter, monthly reports will be evaluated for compliance with City diversion requirements. Failure to comply with the recycling and diversion requirements shall be a material breach of this Agreement.

SECTION 8. ENVIRONMENTAL LIABILITY FUND FEE

A. City and Franchisee acknowledge the potential liability which can result from commercial solid waste handling services under Federal and State environmental laws. City intends to take reasonable actions to obtain protection and indemnification against future environmental liability for solid waste generated within the City of Newport Beach and the activities of Franchisee under this Agreement for handling such solid waste. To provide protection and indemnification to City for Franchisee's solid waste handling activities in the City of Newport Beach, Franchisee agrees to collect from its customers a fee for payment into an Environmental Liability Fund which shall be a separate Fund established and maintained by City. The Fund shall be used to purchase insurance which will insure the City against environmental liability which may be imposed upon City as a result of Franchisee's activities under this Franchise and/or shall be used to pay environmental liability costs and expenses arising from or related in any way to commercial solid waste handling services. The Fund shall not be commingled with or included in the City's General Fund.

B. The fee that Franchisee shall pay to the City Environmental Liability Fund shall be five and a half percent (5.5%) of the gross receipts for all commercial solid waste handling services provided by the Franchisee in the City of Newport Beach ("Environmental Liability Fund Fee(s)"). Payment of the Environmental Liability Fund Fee shall be made concurrently with the payment of the Franchise Fees specified in Section 4 of this Agreement. Franchisee agrees to pay late charges and interest as provided in Section 4(E) of this Agreement if Franchisee fails to pay the Environmental Liability Fund Fee within the time frames set forth herein.

C. Compliance with this obligation shall not limit Franchisee's indemnification as set forth in Section 11; however, the indemnification provisions of 11(C) shall be secondary to the Fund established by this Section or any insurance purchased with the funds provided.

SECTION 9. FRANCHISEE'S RECORDS

A. Franchisee shall keep and maintain books of account, income statements, tonnage reports and supporting documents and all other documents that relate in any way to business transactions conducted by Franchisee in connection with the commercial solid waste handling services of Franchisee under this Agreement during the Term of this Agreement and for a minimum period of three (3) years, or for any longer period required by law, after the Termination Date. Such records shall be kept at Franchisee's place of business and shall be clearly identifiable

B. Franchisee shall allow a representative of City to examine, audit and make transcripts or copies of the books of account, income statements, tonnage reports and supporting documents, and all other documents that relate in any way to business transactions conducted by Franchisee in connection with the commercial solid waste handling services of Franchisee under this Agreement at Franchisee's place of business during normal business hours within three (3) working days of the City Manager, or his

designees request or demand to inspect and/or audit these records. The purpose of such inspection and/or audit shall be for verification of the Fees paid by Franchisee under this Agreement, and the accuracy thereof; and for verification of the amounts of solid waste reported by Franchisee pursuant to this Agreement. Franchisee's books of account, income statements, tonnage reports and other documents accessed by City shall be kept confidential unless these documents are deemed necessary by City to enforce the terms of this Agreement or are required to be produced pursuant to any applicable law.

C. The parties agree that Franchisee's failure to provide its records in accordance with City's request to examine, audit and make transcripts or copies of the books of account, income statements, tonnage reports and supporting documents in accordance with Subsection B above, shall be considered a material breach of this Agreement and will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. The parties agree that if Franchisee fails to provide its records in accordance with Subsection B above, the City may, in its discretion terminate this Agreement and/or charge a late charge in the amount of Two Hundred Fifty and 00/100 Dollars (\$250.00) for each working day that Franchisee does not provide said records. Execution of this Agreement shall constitute agreement by the parties that the late charge set forth in this subsection is the minimum value of the costs and actual damages caused by the failure of the Franchisee to provide records in accordance with Subsection B above. Such sum is liquidated damages and shall not be construed as a penalty.

D. Franchisee shall reimburse City for City's costs in performance of an audit if, as a result of the audit it is determined:

1. There was any intentional misrepresentation by Franchisee with respect to the amount of Fees due to the City; or
2. There is a one thousand dollars and 00/100 (\$1,000.00) or greater discrepancy in the amount of Fees due to the City.

Such reimbursement shall be paid by Franchisee within thirty (30) days of the date City notifies Franchisee in writing that the Franchisee is liable to reimburse the City in conformance with this subsection and the amount of City's audit costs.

E. If Franchisee refuses to provide City's auditor with its records as required by Subsection B above or disagrees with City's audit findings, then Franchisee may, within ten (10) days after written request by City's designated representative for records disclosure, or within ten (10) days after service of the audit finding, appeal the imposition of late charge or the audit findings by filing a written appeal with the City Council specifying the basis of Franchisee's failure to provide records, or the reason for its disagreement with City's audit findings. If Franchisee fails to timely request such an appeal to the City Council, then the late charges and/or discrepancy determinations shall be final and conclusive and the amounts shall become immediately due and payable and/or the violation shall be deemed established.

SECTION 10. INSURANCE REQUIREMENTS

A. Provision of Insurance. Without limiting Franchisee's indemnification of City, and prior to commencement of Work, Franchisee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Franchisee agrees to provide insurance in accordance with requirements set forth here. If Franchisee uses existing coverage to comply and that coverage does not meet these requirements, Franchisee agrees to amend, supplement or endorse the existing coverage.

B. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

C. Coverage Requirements.

1. Workers' Compensation Insurance. Franchisee shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Franchisee shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, officials, employees and agents.

2. General Liability Insurance. Franchisee shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate and two million dollars (\$2,000,000) completed operations aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

3. Automobile Liability Insurance. Franchisee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Franchisee arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

D. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Franchisee or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Franchisee hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

2. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability (if required), shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

3. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

4. Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

E. Additional Agreements Between the Parties. The parties hereby agree to the following:

1. Evidence of Insurance. Franchisee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

2. City's Right to Revise Requirements. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Franchisee ninety (90) days advance written notice of such change.

3. Right to Review Subcontracts. Franchisee agrees that upon request, all contracts with subcontractors or others with whom Franchisee enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such contracts will not impose any liability on City, or its employees.

4. Enforcement of Contract Provisions. Franchisee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Franchisee of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

5. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification

only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

6. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

7. City Remedies for Non Compliance. If Franchisee or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Franchisee's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Franchisee or reimbursed by Franchisee upon demand.

8. Timely Notice of Claims. Franchisee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Franchisee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

9. Franchisee's Insurance. Franchisee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

SECTION 11. RESPONSIBILITY FOR DAMAGES AND INJURY/INDEMNIFICATION

A. Franchisee Responsibility. Franchisee shall be responsible for any damages caused as a result of Franchisee's acts or omissions including, but not limited to injuries to or death of any person or damage to public and/or private property and damages public improvements as a result of Franchisee's placement and retrieval of the commercial solid waste containers.

B. General Indemnification. Franchisee shall indemnify, hold harmless, and defend City, and each of its past, present and future elected officials, officers, employees, agents, consultants, volunteers, affiliates, assignees, representatives, attorneys, subsidiaries, and affiliated entities and their respective successors, heirs and assigns (collectively, "Indemnified Parties") harmless for, from and against any costs, expenses, damages, and losses, including actual attorneys fees ("Losses") of any kind or character to any person or property arising directly or indirectly from or caused by any of the following: (i) any act or omission of Franchisee or its respective officers, directors, shareholder members, partners, employees, agents, Franchisees, subcontractors, suppliers, representatives and affiliates ("Franchisee Representatives"); (ii) Franchisee's or Franchisee Representative's activities; (iii) any accident or casualty within or arising out of the Services performed under the Franchise and/or this Agreement; (iv) any violation or alleged violation of any law, ordinance or statute now or hereafter enacted arising out of Services performed pursuant to the Franchise and/or this Agreement; (v) the negligence or willful misconduct of Franchisee or any of

Franchisee representatives in the performance of the Services under the Franchise and/or this Agreement; and (vi) any breach of the Franchise and/or this Agreement.

Franchisee shall not be required to indemnify, hold harmless and defend the Indemnified Parties from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Franchisee.

C. Hazardous Substances Indemnification. Franchisee shall indemnify the Indemnified Parties from and against all claims, actual damages including, but not limited to, special and consequential damages, natural resource damage, punitive damages, injuries, costs, response, remediation, and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnified Parties or Franchisee arising directly or indirectly from or caused by any of the following: (i) the violation of any Environmental Laws or the failure to clean up and mitigate the consequences of the spill or release of any Hazardous Substance; and (ii) Franchisee's activities under this Agreement concerning any Hazardous Substance at any place where Franchisee stores or disposes of solid or hazardous waste pursuant to this Agreement, or preceding Agreements between City and Franchisee. The foregoing indemnity is intended to operate as an agreement pursuant to the Comprehensive Environmental Response, Compensation and Liability Act 42. U.S.C. Section 9607(e) and any amendments thereto; California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City from liability.

As used herein, the term "Environmental Laws" shall mean "any and all present and future federal, state or local laws (whether common law, statute, rule, regulation or otherwise), permits, orders and any other requirements of Governmental Authorities relating to the environment or any "Hazardous Substance" or "Hazardous Substance Activity" (as defined herein) (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*) as amended from time to time and the applicable provisions of the California Health and Safety Code and California Water Code).

As used herein, the term "Hazardous Substance" shall mean "any (a) chemical, compound, material, mixture or substance that is now or hereinafter defined or listed in, or otherwise classified pursuant to any Environmental Law as a "hazardous substance", "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic waste," "toxic pollutant," or any other formulation intended to define, list or classify substances by reason of deleterious properties or affect and (b) petroleum, petroleum by-products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, municipal solid waste, steam, drilling fluids, produced waters and other wastes associated with the

exploration, development and production of crude oil, natural gas or geothermal resources."

D. AB939 Indemnification. Franchisee agrees to meet all requirements of City's Source Reduction and Recycling Element as to the portion of the solid waste stream handled by Franchisee. Franchisee agrees to protect, defend, indemnify, and hold City harmless against all fines or penalties imposed by the California Integrated Waste Management Board, or other entity, arising from the failure of Franchisee to meet the Integrated Waste Management Act diversion requirements with respect to the portion of the commercial waste stream collected by Franchisee.

E. Notice. City agrees to give notice to Franchisee when the City receives a claim for damages or other liability for which Franchisee has provided indemnification under this Section.

SECTION 12. COMMERCIAL SOLID WASTE COLLECTION SERVICES

A. Frequency of Collection. Franchisee shall collect all solid waste, including recyclable materials, as authorized in this Agreement, on a schedule to be agreed upon between the Franchisee and its customers. The schedule shall provide for collection service at least once per week; provided, however, that such schedule shall not permit the accumulation of solid waste in quantities that are unreasonable or detrimental to the public health or safety. Requests for collection from premises with overflowing bins or containers, or from premises where there have been missed pickups, shall be serviced within twenty four (24) hours of any such request by the customer or City. If requested by the City at any time, Franchisee's collection schedule shall be submitted to the City for its approval.

B. Hours and Days of Collections. No collection of solid waste shall occur in any area of the City after 6:30 p.m. and prior to 5:00 a.m. No collection of solid waste from commercial premises within five hundred (500) feet of occupied residential premises, motels or hotels shall be made by Franchisee, nor shall any of Franchisee's collection vehicles be operated in any residential areas of the City except between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, nor on any Saturday or Sunday, except between the hours of 8:00 a.m. and 6:00 p.m. Collection on Sundays shall be limited to the disposal of commercial waste from commercial premises which require collection every day due to public health and safety concerns.

SECTION 13. VEHICLES AND EQUIPMENT

A. Any and all containers provided to customers of Franchisee for storage, collection or transportation of commercial solid wastes shall meet the requirements designated by the Municipal Operations Director as well as State of California minimum standards for solid waste handling established under Public Resources Code Section 43020 and applicable health requirements.

B. All containers and all vehicles used by Franchisee in the performance of commercial solid waste handling services shall be marked with Franchisee's name and

telephone number in letters which are not less than four inches (4") high or which are easily read by the general public.

C. Equipment.

1. Franchisee shall, at all times, provide such number of vehicles and such equipment as will be adequate for the collection, transportation and disposal services which it is authorized to provide under this Agreement. All vehicles utilized by Franchisee in the performance of this Agreement shall be registered with the California Department of Motor Vehicles. All vehicles must pass the required periodic "BIT" inspection and Franchisee shall provide evidence of such to the Municipal Operations Department as requested. Upon request by the City, Franchisee shall provide records from the most recent California Highway Patrol biennial inspection of the terminal(s) responsible for the maintenance and repair of equipment used in the City. All vehicles shall be properly maintained, kept clean and in good repair, and shall be uniformly painted. All commercial solid waste containers used in the performance of this Agreement shall be kept clean and in good repair and shall be uniformly painted to the satisfaction of the Municipal Operations Director. All vehicles and equipment used by Franchisee in the performance of this Agreement may be subject to inspection by the City upon twenty-four (24) hours notice by the Municipal Operations Director. All drivers employed by Franchisee and operating equipment in the City shall be properly licensed for the class of vehicle they drive, enrolled in the Department of Motor Vehicles Employee Pull Notice (EPN) program, and abide by all State and federal regulations for driver hours and alcohol and controlled substances testing.

2. Each vehicle shall be so constructed and used in a manner so that no rubbish, garbage, debris, oil, grease or other material will blow, fall, or leak out of the vehicle. All solid waste shall be transported by means of vehicles which are covered in such a manner as to securely contain all solid waste and to prevent such solid waste from projecting, blowing, falling or leaking out of the vehicles. Any solid waste dropped or spilled in collection, transfer or transportation shall be immediately cleaned up by Franchisee. A broom and a shovel shall be carried at all times on each vehicle for this purpose. In addition, each collection vehicle shall be equipped with trash bags, masking tape and notice of non-collection tags for the purpose of separating hazardous waste for return to the generator. A communications device such as a two-way radio or a cellular telephone shall also be maintained on each vehicle at all times.

3. Franchisee shall not store any vehicle or equipment on any public street, public right-of-way or other public property in the City of Newport Beach without obtaining a Temporary Street Closure Permit from the Public Works Department and prior written consent of the Municipal Operations Director.

4. Should the Municipal Operations Director at any time give written notification to Franchisee that any vehicle does not comply with the standards hereunder, the vehicle shall be promptly removed from service by Franchisee and not used again until inspected and authorized in writing by the Municipal Operations Director.

5. Placement of containers and equipment shall be in accordance with the standards set by the Director of Public Works and in accordance with the standards set forth in Exhibit A which is incorporated herein by this reference. Any deviation from the standards set by the Director of Public Works or the standards set forth in Exhibit A shall require written approval from the Public Works Director.

SECTION 14. ABANDONED CONTAINERS

A. If Franchisee abandons any commercial solid waste container within the City of Newport Beach, the City may remove the container and/or dispose of the contents of the container.

B. If City is required to remove a roll-off or compactor container abandoned by Franchisee and/or disposes of the contents of any container abandoned by Franchisee, City may charge Franchisee for City's costs incurred in such removal/disposal and for City's costs of storage of the container. Franchisees who are engaged in providing roll-off containers shall maintain a Five Thousand Dollars and No/ 100 (\$5,000.00) cash deposit with City Revenue Division to reimburse City for such costs within ten (10) days of the date of City's invoice for such costs.

C. For the purposes of this Section, "abandoned" includes:

1. Franchisee's failure to remove the container within the time period specified by the City Council upon termination of the Franchise pursuant to Section 12.63.140 of the Code;

2. Franchisee's failure to remove the container within ten (10) working days after the expiration of the Franchise granted to Franchisee, except in the case where Franchisee has been granted an extension of the term of said Franchise or Franchisee has been granted a subsequent franchise authorizing Franchisee to collect and transport the type or types of solid waste for which the container was used pursuant to this Agreement.

3. Franchisee's failure to collect the container and dispose of the contents of the container within five (5) calendar days after City's Director of Municipal Operations issues written notice to Franchisee to dispose of the contents.

SECTION 15. COMPLIANCE WITH LAW

A. Franchisee shall perform all commercial solid waste handling services in accordance with applicable federal, state, and local law, including Chapter 12.63 of the Code, Article XIII of the City Charter, Ordinance No. 2007-07 and in accordance with the terms and conditions of this Agreement.

B. During the Term of this Agreement, Franchisee and City agree that the City's ordinances may be amended as provided herein, as provided in Chapter 12.63 or as necessary to permit the City to comply with changes to federal, state, and local legislative regulatory requirements, which may affect or alter City's solid waste handling

obligations or requirements for solid waste management. Franchisee agrees to comply with any such amendment of the City's ordinances.

SECTION 16. PERMITS AND LICENSES

Franchisee shall obtain and maintain, at Franchisee's sole cost and expense, all permits and licenses applicable to Franchisee's operations under the Franchise which are required of Franchisee by any governmental agency. Payment of Franchise Fees and Environmental Liability Fund Fees shall be in addition to any permit or license fees or business tax prescribed by the City for the same period.

Franchisee shall obtain and maintain for the Term of this Agreement an account with the Orange County landfills. If Franchisee disposes of solid waste at an Orange County landfill, the Franchisee shall only dispose of Newport Beach solid waste at Orange County landfills utilizing their account (no "cash only" disposal).

SECTION 17. PUBLIC EDUCATION ACTIVITIES

A. City and Franchisee shall cooperate in co-sponsoring not more than one promotional event per year, as mutually agreed upon in advance by the parties, which is related to the implementation of commercial solid waste handling services and recycling services.

B. Each year during the term of this Agreement, on an annual basis, Franchise shall transmit promotional brochures or fliers to its customers and to such prospective customers as it may select, informing them of the commercial solid waste handling services and recycling services which are provided by the Franchisee as well as hazardous waste disposal requirements.

C. All promotional brochures, fliers or other information distributed by Franchisee hereunder shall be printed on recycled paper. All such informational materials shall be approved in advance by the City's Municipal Operations Director.

SECTION 18. TERMINATION AND SUSPENSION

A. The franchise granted to Franchisee may be terminated by the City Council pursuant to Section 12.63.140 of the Code.

B. In the event the Franchise is terminated pursuant to Subsection A above or the term of this Agreement expires:

1. Franchisee shall have no right or authority to engage in commercial solid waste handling operations in the City of Newport Beach, subject to the provisions of Sections 49520-49523 of the Public Resources Code.

2. Franchisee shall, however, remain liable to City for any and all Franchise Fees and Environmental Liability Fund Fees that would otherwise be payable by Franchisee, for any and all late charges and interest assessed pursuant to Section 4

of this Agreement, and for any and all delinquent report/record charges assessed pursuant to Sections 7 or 9 of this Agreement.

3. Franchisee shall have a continuing obligation to submit to City all reports required by Sections 7 and 9 of this Agreement which relates to commercial solid waste handling services performed by Franchisee up to and including the date of termination, suspension, or expiration.

4. Franchisee shall allow the solid waste generators served by Franchisee to arrange for commercial solid waste handling services with a solid waste enterprise collector authorized to perform such services, without penalty or liability for breach of contract on the part of the generators, for such period of time as Franchisee is not authorized to perform such services because of termination or suspension.

5. Franchisee agrees to continue to provide the indemnifications required in this contract after its suspension or termination. Such indemnifications include, but are not limited to, the hazardous materials indemnification and AB939 indemnification as set forth in Section 11.

C. In the event this Franchise is terminated pursuant to Subsection A above, then within the time period specified by the City Council, Franchisee shall remove all of Franchisee's commercial solid waste containers, from all Franchisee's collection service locations and shall properly dispose of all solid waste in such containers.

D. In the event the Franchise is terminated pursuant to Subsection A above or expires without an extension of the term and without a grant of a subsequent franchise allowing Franchisee to continue performing such services, then within ten (10) days of such termination or expiration Franchisee shall either:

1. Submit to City's Municipal Operations Director a list of the names and addresses of solid waste generators in Newport Beach for which Franchisee provided services as of the date of termination or expiration (i.e. Franchisee's City of Newport Beach customer list); or

2. Send written notification to each solid waste generator on Franchisee's customer list that Franchisee is no longer authorized to provide commercial solid waste handling services in the City of Newport Beach. Such notification shall be in the form provided by City's Municipal Operations Director and shall be personally delivered or shall be sent by first class mail, postage prepaid, to the customers' billing addresses. Franchisee shall submit to City's General Services Director an affidavit, signed under penalty of perjury, stating that the required notification has been provided by Franchisee to all of Franchisee's City of Newport Beach customers.

SECTION 19. ASSIGNMENT

Franchisee shall not assign, sell, subcontract, transfer or otherwise delegate its authority to perform any portion of the solid waste handling services or obligations under

the Franchise without prior express consent of the City Council. This prohibition includes any transfer of ownership or control of Franchisee, or the conveyance of a majority of Franchisee's stock to a new controlling interest. City's consent shall not be unreasonably withheld.

SECTION 20. MISCELLANEOUS PROVISIONS

A. Notices. Except as otherwise provided in this Agreement, all notices required by this Agreement shall be given by personal service or by deposit in the United States mail, postage pre-paid and return receipt requested, addressed to the parties as follows:

To: Municipal Operations Director
City of Newport Beach
P.O. Box 1768
100 Civic Center Dr.
Newport Beach, CA 92660

To Franchisee: G. O. Rodriguez Trucking, Inc.
16155 First St.
Irwindale, CA 91706
Attention: Aaron Rodriguez

Notice shall be deemed effective on the date personally served or, if mailed, three (3) days after the date deposited in the mail.

B. Integrated Agreement. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the City and Franchisee, and all preliminary negotiations and other agreements of any kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

C. Amendments. This Agreement supersedes all prior agreements and understandings between the parties and may not be modified or terminated orally, and no modification, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

D. Applicable Law. The laws of the State of California, and applicable Federal law, shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

E. Authority. The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

F. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

G. Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a difference character.

H. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

I. Equal Opportunity Employment. Franchisee represents that it is an equal opportunity employer and it shall not discriminate against any authorized subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age or any other impermissible basis under law.

J. Compliance with Laws. Franchisee shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. Franchisee agrees to obtain a business license from the City in accordance with the Code. The parties hereto agree that the Franchise and this Agreement are the only authorizations to conduct solid waste collection business in the City and that the issuance of a business license does not grant the Franchisee a right to conduct solid waste collection or other business in the City.

K. Conflicts of Interest. Franchisee or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (i) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (ii) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Franchisee shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Franchisee shall indemnify and hold harmless City for any and all claims for damages resulting from Franchisee's violation of this subsection.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 10/29/13

By: [Signature]
Aaron C. Harp
City Attorney

**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: _____

By: _____
Keith D. Curry
Mayor

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

**CONSULTANT: G. O. RODRIGUEZ
TRUCKING, INC., a California corporation**

Date: _____

By: _____
George Rodriguez
President

Date: _____

By: _____
Linda Rodriguez
Secretary